

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Crl.MC.No. 1723 of 2006()

CC.170/2000 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI

PETITIONER: IST ACCUSED

SISTER SHERIN, D/O.JOSEPH,
NIRMALA PROVINCIAL HOUSE, KARMAGIRI CONVENT,
ASOKAPURAM, ALUVA.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS: STATE AND COMPLAINANT

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. DR.JOHN JACOB THARAYIL, S/O.JACOB
THARAYIL, CIVIL SURGEON, COMMUNITY HEALTH
CENTRE, EDAVANA, MALAPPURAM.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV
PUBLIC PROSECUTOR SMT.T.B.RAMANI.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

A.K. Basheer, J.

Crl.M.C No. 1723 of 2006

Dated this the 19th day of November, 2007.

ORDER

This petition filed under Section 482 of the Code of Criminal Procedure (for short, the Code) is at the instance of accused No.1 in CC.No.170/2000 on the file of the Chief Judicial Magistrate, Manjeri. The above complaint was filed by respondent No.2 herein against the petitioner and her brother Sri. Jain Joseph alleging commission of offence punishable under Section 420 read with Section 34 IPC. I do not propose to refer to the averments made in the complaint, since it is not necessary for the purpose of disposal of this case.

2. The trial court had, by its order dated March 17, 2005 discharged the two accused under Section 245 (1) of the Code after considering the oral and documentary evidence adduced by the complainant. The said order was challenged by the complainant/respondent No.2 before this Court in Crl.R.P.No.1241/2005. This Court had disposed of the above revision petition holding that the reasoning and conclusions of the learned Magistrate did not suffer from any illegality or irregularity on the face of the evidence produced before it. However it was observed that it would always be open to the petitioner therein (the complainant) to produce additional evidence and pursue the matter further, if he was so advised and also to pursue his other remedies as well in accordance with law. A copy of the order in Crl.R.P.1241/2005 is on record as Annexure 2.

3. After a lapse of about one year of passing of Annexure 2 order, the complainant had filed an application before the trial court with a prayer to issue summons to 3 of the witnesses mentioned in the list appended to the complaint which had already been disposed of. The said request was acceded to by the learned Magistrate and summons was in fact ordered to be issued. The petitioner and the co-accused were also directed to appear . It was at that stage that the petitioner has preferred this petition under Section 482 of the Code.

4. Having heard learned counsel for the petitioner and respondent No.2/complainant I have no hesitation to hold that the procedure adopted by the court below is totally irregular. The liberty that was reserved in favour of the complainant in Annexure 2 order was obviously not the one which he has now chosen to opt. Of course it might have been possible to the complainant to file a fresh complaint since the accused had only been discharged under Section 245(1) of the Code. He could not have filed a petition seeking permission to adduce further evidence in a complaint which had already been disposed of. Similarly, learned Magistrate could not have issued summons to the accused in the said complaint which was not on its file. Therefore the proceedings initiated against the petitioner are totally misconceived and irregular.

4. Therefore the CrI.M.C is allowed. The proceedings against the petitioner are quashed. However It is made clear that it will be open to respondent No.2/complainant to pursue the remedy, if any, available to him under law.

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**A.K. Basheer
Judge.**